

S.No.9

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
21-12-2023 AT 10:30 AM**

CP (IB) No. 271/9/HDB/2022
u/s. 9 of IBC, 2016

IN THE MATTER OF:

Sun Printers

...Operational Creditor

VS

OMICS International Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. In the result, **this Company Petition is dismissed** with costs of Rs. 5,00,000/- payable to the Prime Minister reliefs fund through Bharath Kosh.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH-1

CP (IB) No.271/9/HDB/2022

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

M/s. Sun Printers, A Partnership Firm,
Registration No. 660 of 2014,
Registered Office: H.No. 1-7-104/2,
Kamala Nagar, ECIL Post,
Secunderabad, Hyderabad-500062

...Operational Creditor

Versus

M/s. Omics International Pvt Ltd,
CIN: U22122TG2008PTC061143,
Registered Office at Building No.20,
9th Floor, Raheja IT Park, Mindspace,
APIIC Layout, Hitech City,
Hyderabad, Telangana - 500081

...Corporate Debtor

Date of Order: 21.12.2023

Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA

HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For Operational Creditor : Ms. Kritika Sharma, PCS along

Mrs. A.Sandhya Rani, Counsel

For Corporate Debtor : Mr. P.Ravi Prasad, Counsel

PER BENCH

ORDER

1. This Application is filed by M/s. Sun Printers (hereinafter referred as “Operational Creditor”) under Section 9 of “The Insolvency and Bankruptcy Code, 2016” (hereinafter to be referred as “IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred as “CIRP”) against M/s. Omics International Pvt Ltd (hereinafter referred as “Corporate Debtor”),

alleging that the following amount is due and payable to the
Petitioner/Operational Creditor as on 08.02.2022:

• Principal amount	..	68,96,128/-
• Interest amount (@24%)	..	36,41,582/-
• Total	..	1,05,37,712/-
• Total amount claimed	..	1,05,37,712/-

Dates of default: Various invoices raised since 18.02.2019

Computation of total debt amount at **Page 13 of the Petition.**

2. The present application was filed by Petitioner/Operational Creditor i.e., M/s. Sun Printers, a Partnership Firm involved in the business of printing & stationery. The Respondent/Corporate Debtor is a Company registered under the provisions of The Companies Act, 1956 and was incorporated on 22.09.2008 with Identification Number U22122TG2008PC061143.

3. The Contentions as put-forth by the Operational Creditor are:

(i) That the Corporate Debtor approached the Operational Creditor for supply of print material pertaining to volumes of book printing for various business needs, print of letter heads, ID card pouches, ID cards, certificates, posters, calendars, lamination work,

mementos, banners, standees and other related items and placed various orders for the same.

(ii) That the Corporate Debtor has defaulted in making payment of invoices amounting to Rs. 68,96,128/- (Rupees Sixty-Eight Lakhs Ninety-Six Thousand One Hundred Twenty-Eight Only) along with an interest @ 24% amounting to Rs. 36,41,582/- (Rupees Thirty-Six Lakhs Forty-One Thousand Five Hundred Eighty-Two Only) since 18.02.2019 to till the filing of the present Petition.

(iii) That the Corporate Debtor, inspite of several reminders, failed to repay an amount of Rs. 1,05,37,712/- (including interest @24%) since 18.02.2022.

(iv) That no response was given by the Corporate Debtor against the receipt of Form 3 Demand Notice (**Page 18 of the Petition**) issued by the Operational Creditor and hence, the present Petition was brought before this Tribunal.

(v) The information submitted to the information utility with regard to the alleged default/debt of the Corporate Debtor was also

produced by the Petitioner/Operational Creditor (**Page 286 of the Petition**).

(vi) That Ms. Mano Ranjani, Regd. No. IBBI/IPA-001/IP-P00736/2017-2018/11235 was proposed as Interim Resolution Professional.

4. The Respondent/Corporate Debtor put forth the following contentions by way of Counter:

(i) The Corporate Debtor filed its Counter through its Authorised Representative Mrs. G. Anitha (**Annexure 7**). The Corporate Debtor at the outset denied all the averments made against it by the Operational Creditor and sought for dismissal of the present Petition. It was stated that the present proceedings initiated by the Operational Creditor is a recovery proceeding seeking for recovery of amount of money which is to be adjudicated by a competent civil court and hence, liable to be dismissed.

(ii) It was contended that as per the ledger/account statement of Corporate Debtor (**Annexure 1**), it is the Operational Creditor who

owes Rs. 44,66,908/- to the Corporate Debtor which were given as advances to the Operational Creditor from April 2018 (after adjusting the invoices amount accepted/approved by the Corporate Debtor) and an additional amount of Rs.13,93,996 in respect of invoices raised for excess supplies not requisitioned by the Corporate Debtor.

(iii) It was further contended that there exists a bonafide pre-existing dispute between the Operational Creditor and the Corporate Debtor with regard to the payables and receivables between them.

(iv) It was contended that the Corporate Debtor during the year 2017-18 advanced an amount of Rs.45 lakhs to Mr. Suresh, the Authorised Representative of Operational Creditor to start the printing business of Operational Creditor. That during Covid-19, the Petitioner became bankrupt and began sending notices to the Respondent to extract illegal and excess amounts and in furtherance of the same, the Corporate Debtor received a legal notice dated 04.09.2021 (**Annexure 3**) from the Petitioner claiming an amount of Rs.59,40,549/- along with interest and future interest @18% per annum. It was contended that in the said legal notice, the Petitioner

admitted the running credit account between the Petitioner and Respondent/Corporate Debtor and that advances were given by the Respondent to the Petitioner and supplies were made from time to time. A reply dated 15.09.2021 (**Annexure 4**) was sent by the Respondent/Corporate Debtor denying the claims in legal notice dated 04.09.2021 and was stated in the reply that an amount of Rs.58,60,904/- is to be paid by Petitioner to the Respondent. To this reply notice, the Petitioner issued a reply dated 16.10.2021 (**Annexure 5**) wherein it was admitted in the said reply of Petitioner that the receivables of the Respondent “will be adjusted as per the accounts statement”.

(v) It was contended that the present Petition was mischievously filed by the Operational Creditor and stated that the legal notice dated 04.09.2021 sent by the Petitioner mentions about interest @18% (as is generally and customarily prevailing in the trade usages) whereas in the present Petition the interest was claimed at 24% so as to unlawfully bring the claim beyond the threshold limit of Rs. 1 crore.

(vi) It was further contended by the Corporate Debtor that 14 invoices raised by the Petitioner during the claim period (April 2018-March 2019 – **Annexure 6**) amounting to Rs.43,85,764/- were never approved by the Respondent and also that invoices during April 2019-March 2020 amounting to Rs.6,61,958/- were never received by the Respondent. It was also contended that the claim of the Petitioner on the alleged invoices does not amount to an operational debt.

5. The Petitioner/Operational Creditor filed the Reply to Counter (Rejoinder) denying the averments made by the Corporate Debtor in its Counter and contended as follows:

(i) That there is no pre-existing dispute of any suit or arbitration proceedings against the Corporate Debtor and that all the requisite proofs along with Form 1 were submitted by the Operational Creditor.

(ii) That the Operational Creditor did send the legal notice dated 04.09.2021 but contended that the same does not take away the right of the Operational Creditor under IBC.

(iii) That the Corporate Debtor has confirmed the total outstanding dues through their written email and also shared their account ledger. That the evidence of amount due and interest percentage is the invoices, purchase orders placed and not the legal notice issued.

(iv) That Operational Creditor used to submit the delivery challans for all the supplies and collect the acknowledgment on delivery challans. That the invoices were prepared on these delivery challans and submitted with acknowledgment due. That these invoices were never rejected by the Corporate Debtor (**Annexure III**).

(v) That the Corporate Debtor at the time of execution of works order acknowledged the payment of interest @24% per annum as included in the terms and conditions of work order.

(vi) That the amount unpaid and due in question has been accepted by the Corporate Debtor and is a valid admitted claim.

6. The Corporate Debtor, denying the contents of *Rejoinder*, put forth the following contentions by way of Additional Counter:

(i) That the works order/purchase order issued by the Corporate Debtor to the Petitioner/Operational Creditor which mentions the interest @24% are forged and fabricated. That all the purchase orders issued by the Corporate Debtor during 2018 or 2019 were signed by Directors Mr. Gedela Venkata Ramana Murthy, Mr. Gedela Sankar Rao or Mrs. Gedela Anitha. That a police complaint was also filed in this regard on 20.04.2023 at Dwarka Nagar Police Station (**Annexure 1**).

(ii) That there was no agreement between the parties for payment of interest @24% and that the said interest portion @24% cannot be claimed as Operational Debt.

(iii) That the Petitioner in order to sustain its claim of initiation of CIRP against the Corporate Debtor, claiming 24% of interest on the alleged default amount.

7. Relying on **Prashant Agarwal vs. Vikash Parasrampur & Ors.**, (Hon'ble NCLAT), wherein it was observed as "since the interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for right to payment and therefore will form part of

debt”, the Operational Creditor contends that the interest calculated @24% forms part of the operational debt.

8. Relying on **True Build Engineering and Construction LLP vs. Vijaykant Dairy and Food Products Ltd**, dated 05.01.2023 in CP (IB) No. 61/BB/2021, NCLT Bengaluru Bench, wherein it was held that, the Corporate Debtor countered the support of **Prashant Agarwal vs. Vikash Parasrampur & Ors.**, (Hon’ble NCLAT) took by the Operational Creditor.
9. A brief note on the threshold limit was filed by respondent on 15.12.2013 in compliance of the order dated 11.12.2013 of the Tribunal . The note was mostly covering the contentions raised by respondent in various documents filed earlier. However, applicant did not choose to file any submission in this regard, though both sides were given liberty to file a brief note on this subject by 15.12.2023.

10. In the light of the contest put forth the following points have been framed.

Points :

- 1. Whether the operational debt claimed as due and defaulted by the respondent does not meet the threshold limit envisaged**

under section 4 of IB Code? if so, whether the petition is maintainable?

2. Whether any pre-existing dispute exists between the parties as to the debt claimed ? If so, whether the petition is maintainable?

11. We have heard Mrs. Sandhya Rani and Mr. Jagadesh learned counsels for operational creditor and Mr.P.Ravi Prasad and Mr.Kamesh Vedula, learned counsels for corporate debtor, perused the documents and the written submissions.

Point 1:

Whether the operational debt claimed as due and defaulted by the respondent does not meet the threshold limit envisaged under section 4 of I&B Code?, if so, petition filed is maintainable?

12. Admittedly, but for adding claim of interest of a sum of Rs.36,41,582/-, calculated at 24% on the principal sum of Rs. 68,96,128/-, the present claim of operational debt allegedly due and payable by the respondent will not meet the threshold limit as envisaged under section 4 of the I&B Code. As the respondent seriously disputed the debt, particularly by contending that no interest is payable and the purported purchase order filed for the first time along with rejoinder is false and fabricated and also

referred to the police and lodged complaint in this regard, on 13.10.2023, this Tribunal passed an order directing that Ld. Counsel for the operational creditor to clarify how the operational creditor is entitled to claim interest? Besides how the rate of interest has been arrived at , in the absence of any agreement or condition in the invoices filed, by next hearing date. However, the Learned counsel did not file any clarification but on the next hearing date i.e on 11.12.2023 it was orally submitted that the rate of interest since mentioned in the quotation dated 22.08.2018 submitted by the operational creditor, which was filed along with rejoinder on 09.09.2022 interest is claimed at 24% p a.

The submissions.

13.According to the Ld. Counsel for the Petitioner, the respondent Corporate Debtor has defaulted in making payment of the amount covered by the invoices amounting to Rs. 68,96,128/- (Rupees Sixty-Eight Lakhs Ninety-Six Thousand One Hundred Twenty-Eight Only) along with an interest @ 24% amounting to Rs. 36,41,582/- (Rupees Thirty-Six Lakhs Forty-One Thousand Five Hundred Eighty-Two Only) which is due since 18.02.2019, in spite

of several reminders, present petition is filed. Ld. Counsel further submitted that as per the quotation submitted by the respondent, (a copy which has been filed for the first time along with the rejoinder), the respondent agreed to pay interest at 24% hence the respondent is bound by the same and pay interest accordingly.

14. Learned Counsel for corporate debtor while refuting the said submission, submitted that this petition has been filed by artificially inflating receivables of the petitioner to bring the claim within the threshold limit of Rs.1 Crore, envisaged under section 4 of IBC, hence the same is liable to be dismissed. In this context Ld. Counsel referred to the legal notice dated 04.09.2021 issued by petitioner wherein the petitioner while claiming default of payment of the principal amount of Rs.59,40,549/- also claimed interest @ 18%, by contending that, the claim of interest @18% was made “ *as is generally and customarily prevailing in the trade usages*” . Therefore, according to the Ld. Counsel, the demand for payment of interest at 18% as per the petitioner being general and customarily and not under any contract, the present claim for interest at 24% on

the basis of the quotation which according to the Id. Counsel is fabricated, is unsustainable on facts and also under law.

Our finding

15. Admittedly, the claim of operational debt of a sum of Rs. 1,05,37,712/-, includes the sum of Rs.36,41,582/- being the interest on the said sum @24% per annum from the due date, hence de hors interest at 24% or even calculating @18% p.a. the present application will not meet the threshold limit of Rs One Crore as entitled under Section 9 of I&B Code, hence will be liable to be dismissed as not maintainable.
16. Strangely, the petition is completely silent on the “basis”, for claiming interest @24% p.a. on the principal sum of Rs 68,96,128/- . The invoices relied on by the petitioner are also silent on payment of any interest on the said sum. Only after the respondent vehemently disputed the debt as well as the claim of interest and also filed a copy of the legal notice dated 04.09.2021, the petitioner chose to file the so called *quotation* through a rejoinder and raised a contention for the first time that the quotation purportedly submitted

by the respondent since contained the clause for payment of interest 24%. the respondent is bound to pay the same.

17. It is pertinent to note that the suppression of the fact of issuance of a legal notice dated 04.09.2021 by the petitioner to the respondent, whereunder the petitioner claimed an amount of Rs.59,40,549/- along with interest @18% by specifically stating that interest at 18% has been claimed '*as is generally and customarily prevailing in the trade usages*', is intentional, since the knowledge of issuance of legal notice dated 04.09.2021 is not denied.
18. That apart, the interest at 18% as claimed in terms of the afore stated legal notice on the purported operational debt of Rupees 68,96,128/- , even if is accepted as payable, yet the subject operational debt will not come under the pecuniary jurisdiction of this Tribunal.
19. Hence, it is clear that the sole purpose behind inflating the rate of interest to 24% p.a. is to bring the subject operational debt under the threshold limit envisaged under section 4 of IB Code and not because of any agreed clause or agreement between the parties.

Hon'ble Supreme Court of India, in re Ramjas Foundation & Ors.
Supra, wherein it was held that;

“The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution **but also to the cases instituted in others courts and judicial forums**”(Emphasis is ours).

20. Therefore, in the light of our discussion as above, we have no hesitation to come to the conclusion that the petitioner indulged in suppressing the material facts in its knowledge, hence we hereby *reject* the interest claim as made by the petitioner. As already stated de hors the claim for interest @ 24% p.a. on the principal sum of Rs.68,96,128/-, the petitioner’s purported claim of existence of the operational debt allegedly due and defaulted, by the respondent will not attract section 9 of IB Code, as such the petition is liable to be dismissed as not maintainable before the Adjudicating Authority.

21. In the light of finding in point 1 we are not entering into any finding of point on point 2, as the very jurisdiction of this Tribunal is found to be lacking.

Point answered accordingly.

22. Needless to say, that, time and again it has been held by Apex Court of India and also Hon'ble NCLAT, that parties cannot invoke IB Code, for the purpose of recovery of their dues.

Hon'ble NCLAT, in Mr. Maulik Kirtibhai Shah Proprietor of MK Enterprises R/a No.401, Aarohi Complex, Vijay Cross Road, Ahmedabad Vs United Telecoms Limited, Company Appeal (AT) (CH) (Ins) No. 268/2023, reiterated that,

Time and again, the Hon'ble Apex Court in a catena of Judgements held that the IBD is not a 'recovery mechanism'

23. Here from the facts of this case it is clear that, the respondent has deliberately indulged not only in suppression of material fact of issuance of the legal notice dated 04.09.2021, which is well within its knowledge but also intentionally inflated the rate of interest with the sole purpose of bringing the purported claim under I&B Code, which is nothing but arm twisting the respondent to pay the claim as made.

Here, it is pertinent to state that, in terms of section 65 of I&B Code, which is as below:

(1) *"If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any*

purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.”

24. Therefore, from the above provision it is clear that it is found by this Tribunal that initiation of Insolvency Resolution Process is with a malicious intent for any purpose other than the resolution of insolvency. This Tribunal may impose upon such person a penalty which shall not be less than one crore.
25. We have already held that the petitioner is indulged in suppression of material facts, which is within its knowledge and also inflated the rate of interest, in order to bring subject claim under the purview of Section 9 of I&B Code. Therefore, we are of the view that the petitioner can be subjected to cost in this case. Hence, we direct the petitioner to pay sum of Rs.5 lakhs as costs payable to the Prime Minister reliefs fund through Bharat Kosh and file compliance within 15 days from the date of this order.
26. We hereby make it clear that we have not entered into any finding on the merits of the contentions as regards the existence of the operational debt as claimed by the petitioner.

27. In the result this Company Petition stands dismissed as not maintainable before this Adjudicating Authority, however with costs of Rs.5,00,000/- payable to the Prime Minister reliefs fund through Bharat Kosh.

-SD-

Charan Singh
Member Technical

-SD-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Anil/Pavani